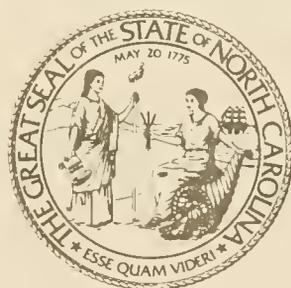


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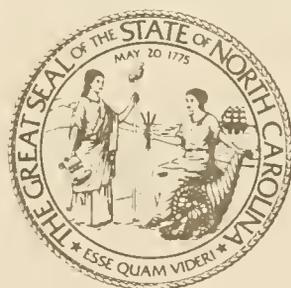
NEW HEALTH OCCUPATIONAL LICENSING BOARDS



REPORT TO THE
1983 GENERAL ASSEMBLY
OF NORTH CAROLINA

LEGISLATIVE RESEARCH COMMISSION

NEW HEALTH OCCUPATIONAL LICENSING BOARDS



REPORT TO THE
1983 GENERAL ASSEMBLY
OF NORTH CAROLINA

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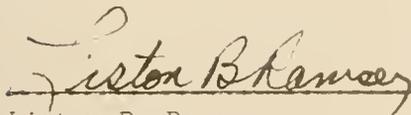
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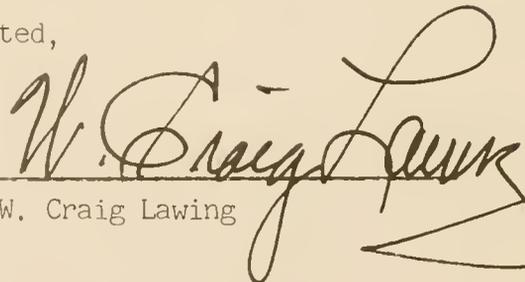
TO THE MEMBERS OF THE 1983 GENERAL ASSEMBLY:

The Legislative Research Commission herewith reports to the 1983 General Assembly on the matter of the need for new health occupational licensing boards. The report is made pursuant to Resolution 61 of the 1981 General Assembly.

This report was prepared by the Legislative Research Commission's Committee on New Health Occupational Licensing Boards and is transmitted by the Legislative Research Commission for your consideration.

Respectfully submitted,


Liston B. Ramsey


W. Craig Lawing

Cochairmen
Legislative Research Commission

TABLE OF CONTENTS

	<u>Page</u>
I. LETTER OF TRANSMITTAL	i
II. INTRODUCTION	3
III. BACKGROUND	7
IV. PROCEEDINGS	14
V. FINDINGS	20
VI. RECOMMENDATIONS	34
VII. APPENDICES:	
A. LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP LIST	A-1
B. AN ACT TO AUTHORIZE THE LEGISLATIVE COMMITTEE ON AGENCY REVIEW TO STUDY THE NEED FOR NEW LICENSING LAWS AND PROGRAMS ACCORDING TO CRITERIA AND PROCEDURES SPECIFIED HEREIN.	B-1

I N T R O D U C T I O N

The Legislative Research Commission, created by Article 6B of General Statutes Chapter 120, is authorized pursuant to the direction of the General Assembly "to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" and "to report to the General Assembly the results of the studies made," which reports "may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations." G.S. 120-30.17. The Commission is chaired by the Speaker of the House and the President Pro Tempore of the Senate, and consists of five Representatives and five Senators, who are appointed respectively by the Cochairmen. G.S. 120-30.10(a). (See Appendix A for a list of the Commission members.)

Pursuant to G.S. 120-30.10(b) and (c), the Commission Cochairmen appointed study committees consisting of legislators and public members to conduct the studies. Each member of the Legislative Research Commission was delegated the responsibility of overseeing one group of studies and causing the findings and recommendations of the various committees to be reported to the Commission. In addition, one Senator and one Representative from each study committee were designated Cochairmen.

By House Joint Resolution 1292 (1981 Session Laws, Resolution 61), the Legislative Research Commission was authorized to study the need for new health occupational licensing boards. In order to accomplish these

tasks, Representative John T. Church, a member of the Legislative Research Commission was appointed to coordinate and oversee the Study on the Need for New Health Occupational Licensing Boards. Senator Cecil R. Jenkins, Jr. and Representative H. Martin Lancaster were appointed to cochair the Committee. The other members appointed were Senator William W. Redman, Jr.; Representatives Howard B. Chapin, David H. Diamont and Thomas B. Hunter; and public members Dr. John Ball and Ms. Sue Applewhite. The Legislative Services Office provided staff assistance to the Committee for this study.

The minutes of the Committee meetings reflect the statements and discussions of each meeting. All of this information is included in the Committee files.

B A C K G R O U N D

The interest of various health, social services, and related personnel in obtaining licensure status in North Carolina has increased over the last decade. The initial resolutions, HB 477 and SB 285, requesting the New Health Occupational Licensing Board Study shows the increasing frustration that the North Carolina General Assembly has felt regarding this question. Each session the General Assembly has been bombarded by requests from new and old groups concerning licensing; for example, in the 1981 Session, some twenty health groups petitioned the General Assembly and five of these sought new licensing procedures.

Credentialing an individual to perform an occupational function entails documentation which attests to the individual's minimum professional competency in a specified area. There are several possible means through which the individual may be required to demonstrate competency-- educational achievement, written and oral tests, and evidence of practical experience. In the health care professions, credentialing is usually found in either of two forms:

- 1) Certification - the process by which a non-governmental organization recognizes an individual's level of education and/or practical attainment through predetermined professional standards.

- 2) Licensure - the process by which the legislative branch of state government grants permission to an individual to engage in a given occupation upon finding that an applicant has attained the minimum degree of competency necessary to insure that the public health, safety or welfare will be reasonably well protected when that individual begins practice. Licensure prohibits all others from legally practicing in a given area.

There are a number of issues underlying personnel licensure in the health field. These include the emphasis on competence at initial entry rather than at periodic intervals in the practitioner's career, the emphasis on formal education as a prerequisite to entering an occupation with little or no opportunity for applicants to substitute practical experience, potential obstacles to career and geographic mobility if the proper license cannot be obtained and the general fragmentation of the credentialing process. Because of rapid developments in the education, utilization and distribution of health manpower, credentialing through state licensure can inhibit the utilization of new techniques. Greater flexibility in the credentialing process has been urged as a means of adequately responding to the new challenges of manpower training and utilization and the accompanying problems of maldistribution.

During the past quarter century, the whole country has experienced a sharp increase in occupational licensing legislation. In fact the number of professions, skilled trades, and even semiskilled jobs that are contingent upon a satisfactory demonstration of competence and integrity before a governmental licensing body has doubled since the 1950's. Although licensing was originally intended to protect the public from dishonest and incompetent practitioners, current licensing practices may obtain an additional result: they limit the number of practitioners by imposing unnecessarily difficult requirements as conditions for acquiring a license. Furthermore, licensure qualifications are generally set by the professions themselves, and professional control is maintained through boards of examiners composed of or dominated by the professions. Thus, licensure may mean only that licensed practitioners meet standards set by

their own profession; it does not necessarily mean that the state has independently evaluated the profession's standards or has endorsed their standards as being of value to society.

All licensing boards offer two essential justifications for their existence: (1) that the occupation or profession in question is of such importance to public health, safety, or welfare as to require assurance that only persons of competence may enter the profession and (2) that the technical nature of the profession or occupation requires the judgment of professionals to determine a practitioner's qualifications. Neither of these justifications by itself is sufficient for the existence of a board. An occupation not immediately affecting the welfare of the public (e.g. a research chemist) may not need to be licensed even if the occupation is such that only a professional's peers can evaluate his competence; likewise, an occupation whose "ins and outs" the general public can understand may not need to be licensed since public evaluation of competence will theoretically be mirrored in demand (or lack of it) for a practitioner's services.

The history of licensure in North Carolina has not consciously reflected these two criteria. Licensing boards beginning with the Medical Examiners in 1858 have been established by the legislature on an ad hoc basis with little real understanding of the implications of licensure. In most cases the establishment of a new licensing board has proceeded from lobbying efforts by the profession to be licensed, and the source of these petitions for licensure further obscures the motivations for such regulation. Whether the profession really has the public welfare at heart or is more interested in promoting the status of the profession by limiting

entry (and thus potential competition) into the profession or otherwise protecting the members of the profession cannot really be determined. It is not even clear that the two motivations always conflict. For example, in the cases of Hearing Aid Dealers and Fitters and Real Estate Brokers and Salesmen, unscrupulous persons were harming both the public and, by extension, the profession. Licensing to control certain practices benefited both groups. In all cases the public will benefit from protection against incompetence, but at the same time restriction of the profession arising from a "clubbish" attitude between the board and the profession may actually institutionalize certain incompetencies, especially as conditions in the profession may change over time.

Once a profession has obtained a licensing agency, certain reciprocal patterns of protection may develop which serve primarily the interest of the profession. The legislature becomes less likely to interfere with established practices in the profession because a licensing board supposedly has been created and empowered to oversee professional practices. In turn, the profession jealously defends the existence of its licensing board, not wanting to surrender the symbol of status. The end result may be a false sense on the part of the public and the legislature of having established effective oversight of a profession while actually only a layer of insulation between the legislature and the profession has been created. The danger of this result's occurrence derives from the fact that licensure is a much weaker form of regulation than that provided by most regulatory commissions.

In the past several years, many state legislatures have established commissions to make recommendations to counter the proliferation of licensed categories and provide the states with a policy regarding licensing

and credentialing of health personnel rather than the piecemeal occupation by occupation analysis that has become customary in recent years. This policy can help the various legislatures determine the public need and interest in regulating a new profession rather than depending on the possible narrow objectives of the profession itself.

In the final analysis, licensing makes it illegal for anyone who does not hold a valid license to engage in the occupation covered by the statute. Thus, the power to license can be used to deny individuals the legal opportunity to earn livelihoods in their chosen fields. This is an awesome power which it seems that this General Assembly is beginning to recognize.

COMMITTEE PROCEEDINGS

To execute the charge of Resolution 61 of the 1981 Session of the North Carolina General Assembly, the Legislative Research Commission's Committee on New Health Occupational Licensing Boards held five meetings: February 5, 1982, April 16, 1982, November 4, 1982, November 5, 1982 and November 17, 1982. At the Committee's February 5th organizational meeting, an approach to the study was discussed that would be consistent with the time and money allotted. The language of the original bills establishing the study (HB 477 and SB 285) gave some direction when it required the Committee to "propose criteria and procedures to be employed by the General Assembly in reviewing the proposed health occupational licensing....."

Therefore, for the initial two meetings the Committee turned its attention from review of the specific occupational groups listed in HB 477 and SB 285 to a general scheme that would help the legislature make more informed decisions consistent with the overall welfare of the state by developing some uniform criteria on which to judge occupational licensing bills. This method would help legislators determine whether it is in the best interest of the state to license the occupations which were proposed and listed in HB 477 and SB 285.

In its process of deliberation, the Committee reviewed voluminous material related to licensing schemes developed by other states. One of the most recent and thorough publications dealing with the issue of occupational licensing was issued by the Council of State Government. The Council is a joint agency of state governments which is supported and directed by them. Its primary purpose is to conduct research in state

programs and problems. Their 1978 publication, Occupational Licensing: Questions a Legislator Should Ask, articulates reasons why legislatures should be very cautious about licensing occupations. They state that licensed groups may establish monopolies which may have the effect of controlling the availability and cost of services while restricting competition by other professions and occupations. Moreover, such practices often operate to raise the cost to consumers. They also note the conflict that might arise when a new category of practitioners is licensed if licensed occupational groups are already functioning in that area. Many restrictions imposed by various statutes often fail to recognize the overlapping functions of various professional groups. This is particularly true in the health delivery system. Narrowly defined scope of practice statements often result in the fragmentation of services, the underutilization of manpower and the unnecessary proliferation of occupational categories. This fragmentation oftentimes prevents emerging occupational groups from performing some of the "licensed functions" already delegated to other groups. It can also lead to underutilization of paraprofessionals and medical auxiliaries. Further, such a fragmented and uncoordinated delivery system frequently forces employers to hire one of each kind of practitioner. This leads to the public having great difficulty in deciding who can best treat a medical problem.

A review by the staff was done to inform the Committee about other state's schemes for regulating occupations, including methods used by South Carolina, Virginia, Alabama, Michigan, Illinois, New York and New Jersey. All of these states require some filtering mechanism or some hard questions to be answered before there is a determination that licensure is

needed. The most common practice is the one in which an executive agency does the screening and makes a report to the legislature. Another practice is the case in which a committee of the legislature actually does the screening.

The Committee closely examined the way in which Virginia handle its licensing boards. In the Virginia process a new licensing group makes application through an executive agency and proponents of licensure must meet certain standards to prove their case.

It was determined by unanimous vote of the Committee that it was not necessary for North Carolina to have an umbrella organization based upon the Virginia scheme but rather the General Assembly itself should act as a clearinghouse for proposed new licensing acts. It was also determined that it was absolutely necessary for this study to develop criteria under which the General Assembly would be able to judge occupational groups and that these criteria be explicit. The second meeting of April 16, 1982, was devoted to drafting a statutory scheme with a set of criteria for judging occupational licensing requests.

For the third and fourth meetings, the Committee turned its attention to the second part of its charge which required a recommendation to the 1983 General Assembly concerning the licensing of social workers, athletic trainers, occupational therapists, counselors, medical radiologic technologists and sanitarians. To carry out these duties, the Committee combined its two charges. The five groups listed above were requested to submit information addressing the criteria proposed by the Committee. These reports from the five occupational groups formed the basis for two days of public hearings held on November 4 and 5, 1982. Although

sanitarians were listed in HB 285, the Committee did not study this group because a licensing bill for them was approved by the 1982 General Assembly (Chapter 1274, S.L. 1981, Second Session).

The fifth and final meeting on November 17, 1982 was dedicated to drafting final recommendations contained in a later section of this report.

F I N D I N G S

Pursuant to the direction of House Joint Resolution 1292 (1981 Session Laws, Resolution 61) the Legislative Research Commission's Committee on New Health Occupational Licensing Boards, after having reviewed the information presented, makes the following findings as listed below:

FINDING 1. THERE IS AN URGENT NEED FOR A STATUTORY SCHEME THAT WOULD ESTABLISH CRITERIA FOR JUDGING OCCUPATIONAL LICENSING REQUESTS.

The Committee believes that the record shows that licensing in North Carolina in the past has been on an ad hoc basis without any real attention to some issues underlying licensing and what impact these issues have on the citizens of the state and the rights of persons to earn a livelihood. North Carolina is experiencing a sharp increase in occupational licensing requests to the General Assembly. Therefore, to address these problems, the Committee has developed criteria to the end that legislative oversight may be improved.

A group seeking licensure should have the burden of demonstrating that the following questions are answered commensurate with the state's interest in licensing:

(a) Whether the unregulated practice of the occupation or profession may be hazardous to the public health, safety, or welfare;

(b) The number of people who would be regulated and the number of persons who use those services;

(c) Whether the occupational or professional group has an established code of ethics, a voluntary certification program, or other measures to ensure a minimum quality of service;

(d) Whether other states have regulatory provisions similar to the one proposed;

(e) How the public would benefit from regulation of the occupation or profession;

(f) How the occupation or profession would be regulated, including the qualifications and disciplinary procedures to be applied to practitioners;

(g) The purpose of the proposed regulation and whether there has been any public support for licensure of the profession or occupation;

(h) Whether any other licensing board regulates similar or parallel functions; and

(i) Any other information considered relevant to the proposed regulatory plan.

The Committee tested the above questions by requesting all five occupational groups to provide information answering the nine questions. This information was then used by the Committee to answer the following criteria which led to conclusions about whether licensing for each group was in the best interest of the state.

(1) The unregulated practice of the profession or occupation can substantially harm or endanger the public health, safety or welfare, and the potential for such harm is recognizable and not remote or dependent upon tenuous argument;

(2) The profession or occupation possesses qualities that distinguish it from ordinary labor;

(3) Practice of the profession or occupation requires specialized skill or training;

(4) A substantial majority of the public does not have the knowledge or experience to evaluate whether the practitioner is competent; and

(5) The public is not effectively protected by other means.,

The following findings concerning each of the five occupational groups reflect the Committee's effort in using the above-listed criteria in reaching some objective decision about each individual group's need for state license consistent with the overall welfare of the state.

RADIOLOGIC TECHNOLOGISTS

Radiologic technologists specialize in the use of radiation to assist the physician in diagnosis of disease or injury. When radiographic examinations are ordered by a physician, radiologic technologists are primarily responsible for the operation of the x-ray equipment. Patient care and radiation protection are their responsibility during radiographic examinations.

The human health effects of ionizing radiation (including x-rays) have been studied extensively for years with the result that ionizing radiation is known to produce biological damage. While a major source of radiation exposure to the human population comes from the environment, a significant amount of radiation exposure results from medical applications. Radiation used in the healing arts produces nearly 90 per cent of the man-made components of radiation dose to the U. S. population.

Studies by the U. S. Public Health Service show a substantial increase in x-ray examinations received by U. S. citizens. An estimated 115.5 million people received x-ray examinations in 1964 as compared to 141.7 million in 1970. The study estimated that 65 per cent of the civilian population had x-ray studies done in 1970.

The performance of even the most basic, routine x-ray studies require essential knowledge and understanding of the safe operation of x-ray equipment, selection of exposure factors, selection of ancillary equipment (image recording systems), radiation beam adjustment, proper positioning of patients, and many other factors. Errors by radiation equipment operators that produce poor quality x-rays require repeat studies and contribute unnecessarily to the patients' radiation exposure while increasing the cost of health care services. Further, poor quality radiographic images increase the chance of a wrong diagnosis or not detecting an abnormal condition.

For these reasons the Committee believes that the unregulated practice of the profession can substantially harm or endanger the public health and the potential for such harm is recognizable and not remote.

Based on a review of the twenty-four month training program and investigation of the role and function of radiologic technologists, the Committee believes that the profession possesses qualities that distinguish it from ordinary labor and that the profession requires specialized skill and training.

Although the physician or other licensed practitioner has the responsibility of ordering x-ray studies, the actual performance of a vast majority of x-ray examinations is carried out by either an x-ray equipment operator or radiologic technologist. Moreover the Committee heard testimony indicating that some physicians may not have sufficient knowledge of x-ray technology to determine whether a patient receives the minimum exposure necessary. In most instances the patient undergoing the x-ray examination assumes a qualified individual performs the study;

however, no minimum qualifications of education and training are required and competence may vary widely. Therefore, a substantial majority of the public does not have knowledge to evaluate whether the practitioner is competent.

FINDING 2. IN ORDER TO MINIMIZE UNNECESSARY RADIATION EXPOSURE TO THE PUBLIC OF NORTH CAROLINA, MINIMUM REQUIREMENTS GOVERNING THE PRACTICE OF MEDICAL RADIATION TECHNOLOGY SHOULD BE ESTABLISHED BY THE STATE. THE COMMITTEE BELIEVES THAT THIS PROFESSION HAS MET THE TEST OF THE OBJECTIVE CRITERIA ESTABLISHED BY THE COMMITTEE.

ATHLETIC TRAINERS

Information provided to the Committee shows that there are more than 158,000 interscholastic and intercollegiate athletes in North Carolina. The present injury rates indicate that in 1982, 79,125 will be injured in programs without the services of a "qualified trainer". The argument is made that the unregulated practice of athletic training jeopardizes the health care of over 150,000 athletes. Yet when the Committee reviewed the licensing bill itself, all secondary school athletic trainers are exempted. This seems to beg the question of whether this legislation can prevent substantial harm or danger to the public health, safety or welfare, because the proponent's bill would leave a substantial part of the public unprotected.

Regarding the criteria, "whether the public is effectively protected by other means," the Committee believes that the voluntary certification of athletic trainers through the National Athletic Trainers Association provides a measure of protection for the public. There are presently 120 Certified Athletic Trainers practicing in North Carolina.

FINDING 3. THE COMMITTEE BELIEVES THAT ATHLETIC TRAINERS HAVE NOT SUFFICIENTLY PROVED THEIR CASE FOR LICENSING THROUGH THE INFORMATION PROVIDED TO THE COMMITTEE ADDRESSING THE COMMITTEE'S OBJECTIVE CRITERIA.

OCCUPATIONAL THERAPISTS

Occupational Therapy is a health profession which has its foundation in the medical management of patients. Occupational Therapy is the application of purposeful, goal oriented activity in the evaluation, diagnosis and/or treatment of persons whose function is impaired by physical illness, emotional disorder, congenital or developmental disabilities or the aging process. The service is provided to persons of all ages and includes the functional evaluation and treatment of a variety of patients including those suffering from physical injury or disease, for example, stroke, head injury, arthritis, diabetes, serious burns, spinal cord injury and psychiatric disorders, developmental delays and congenital deficits. Services are provided to individuals and groups, both inpatients and outpatients. The purpose of Occupational Therapy is to achieve optimum function, prevent disability and maintain health. Occupational Therapy is a service which assists patients in achieving a maximum level of independence by developing those capacities which remain after disease, accident or impaired development.

The treatment modalities used by Occupational Therapists are those which, in addition to reducing specific pathology or impairment, will simultaneously help the patient learn to apply the newly restored or impaired function to the demands of daily living, thus speeding recovery and an early return to a more independent life.

In summary, Occupational Therapists use selective rehabilitative tasks to reduce specific pathology or impairment and help individuals achieve independence.

Occupational Therapists provide services in rehabilitation centers, through home health agencies, in acute care hospitals, long and short-term psychiatric facilities, skilled nursing facilities, outpatient clinics, physicians offices, community mental health centers, day care centers, and private and public school systems and in private practice.

Registered Occupational Therapists (OTR's) carry professional and administrative responsibilities for Occupational Therapy programs and services. They are responsible for evaluating patients, developing program goals, working with patients to achieve these goals, and documenting progress. Certified Occupational Therapy Assistants (COTA's), working under the supervision of OTR's, assist in patient treatment and total program implementation.

After listening to the testimony of this occupational group, the Committee was very impressed with the work being done for North Carolina citizens. There is also great future potential for increased service in the rehabilitation of North Carolinians.

But the Committee found no concrete evidence that because of unregulated practice there was any substantial harm or danger to public health, safety or welfare. The potential for harm seemed rather tenuous. On the contrary, the Committee was impressed with the expertise of occupational therapists and felt that practitioners of that profession are conscientious in the level of care they provide the public. Furthermore, the Committee was pleased to note that they heard no testimony indicating that anyone had been harmed because of poor quality services provided by OTR's or COTA's.

Thus, there seems that at the present time the public has adequate protection against most potential abuses of this profession. This protection is from two sources. This occupation has an adequate national certification and registration program for both occupational therapy assistants and occupational therapists. Secondly, many occupational therapy clients are referred by other professionals who should be in the best position to judge the professional competency of occupational therapists.

There was one issue that was difficult for the committee to resolve. From the testimony, it appears that physical therapy and occupational therapy are "two branches from the same tree." They are sister professions. Therefore, if one is licensed by the State of North Carolina (physical therapy), then how can the other not be licensed (occupational therapy)? The Committee discussed placing occupational therapy under the physical therapy licensing agency but rejected this idea because these two groups are parallel professions with a unique body of knowledge. This led to the suggestion that since occupational therapy, physical therapy, music therapy, recreation therapy and others are part of the rehabilitation continuum, if licensing is considered, all should be treated equally and be placed together under one licensing umbrella. All of the rehabilitation disciplines should be examined together within this larger context. But the Committee believes that it has no authority to investigate these professions, but must judge only the five groups listed in the Resolution using the objective criteria which it has established.

FINDING 4. THE COMMITTEE BELIEVES THAT THERE IS NOT SUFFICIENT EVIDENCE BASED ON THE CRITERIA ESTABLISHED BY THE COMMITTEE TO WARRANT SEPARATE LICENSING OF OCCUPATIONAL THERAPISTS.

COUNSELORS

A number of specialty areas within the mental health field frequently overlap in function. Clearly psychiatrists have traditionally been vested with the greatest authority and expertise in providing services to persons experiencing mental distress. In recent years psychologists, social workers, professional counselors, religious ministers (and lay clergy), palmreaders and other soothsayers have entered the mental health field and now provide services both through institutions (hospitals, mental health centers, churches, etc.) and in private practice.

Because of the advent of these various helping specialties, a certain amount of public confusion exists over who is qualified to deliver these services. Under current law, psychiatrists and psychologists must be licensed in order to practice their specialty. However, there are no restrictions which apply to others who wish to hold themselves out to the public as qualified to deliver mental health services.

The Committee believes that there has been a demonstration that the public can be harmed by unqualified persons holding themselves out to be something that they are not. Persons who are served by counselors are clients who are striving to attain good mental health. They are seeking services at a time when they are experiencing severe stress and confused feelings which hamper their rational thinking. They are not trained to evaluate counselor's qualifications.

Even though there were no concrete cases presented, the information presented to the Committee made an excellent case for potential harm. However, the suggested licensing scheme was fraught with loopholes and did not regulate the real culprits. This scheme would in essence only protect

the title of "Licensed Professional Counselor" and would not prohibit persons who called themselves something else from continuing to engage in mental health counseling.

FINDING 5. THE COMMITTEE BELIEVES THAT THERE IS NOT SUFFICIENT EVIDENCE BASED ON THE CRITERIA ESTABLISHED BY THE COMMITTEE TO SUGGEST LICENSURE OF COUNSELORS.

SOCIAL WORKERS

The action or failure to act of a social worker often has significant effects on the health, mental health or well-being of both individual clients and family groups. Our data report that more than 100,000 services were rendered to North Carolinians by social workers during fiscal year 1980-81.

Social workers are responsible for such matters as:

1. decisions to remove or return children to their home;
2. the placement of children outside their own family;
3. determining if a child is in risk of physical or sexual abuse;
4. ensuring that a mentally ill patient or a retarded adult can leave an institution with plans for sound care;
5. providing mature and constructive counseling to emotionally distressed individuals and families; and
6. helping people make decisions about their lives in countless number of other ways.

It is because a client is vulnerable, or has been hurt, that the social worker is involved and has been given the task of helping. Failure to help, whether through incompetence or irresponsibility, is a serious matter to thousands of persons every day whose well-being depends upon the

ability of a social worker. Because social workers serve people in so many ways, the extent of harm to the public's health, safety, or economic well-being that is caused by incompetent or improper practice has never been appreciated.

From data presented, the Committee believes that the proponents for social workers licensing have demonstrated many of the elements listed in the proposed criteria although there are some questions which the Committee believes have not been satisfactorily met. For instance, information presented to the Committee made an excellent case for potential harm by unregulated social workers. But when one goes from potential harm to concrete examples, there seems to be no evidence in North Carolina. If one looks at the statutory regulation as introduced in the 1981 General Assembly a large number of those classified by the proponents as "unqualified" would not be covered by the licensing scheme thereby not affording any additional protection to the public. Moreover, since all persons who have been practicing social work for at least two years will be grandfathered into the proposed bill, a large number of persons who do not meet the bill's formal education qualifications will appear to the public to be just as qualified as those who do meet the bill's licensing criteria.

After careful review, the Committee believes the evidence shows that the proponents of social work licensing have not yet developed a clear-cut case to justify licensing. The potential benefits of licensure do not outweigh the restrictions placed on this form of work. The Committee believes that there are other alternatives that would better protect the public than this kind of use of the police power of the State.

FINDING 6. THE COMMITTEE BELIEVES THAT THERE IS NOT SUFFICIENT EVIDENCE BASED ON THE CRITERIA ESTABLISHED BY THE COMMITTEE TO SUGGEST STATE REGULATION OF SOCIAL WORKERS THROUGH THE LICENSING PROCESS.

R E C O M M E N D A T I O N S

RECOMMENDATION 1. TO CARRY OUT THE FINDINGS OF THE COMMITTEE ON NEW HEALTH OCCUPATIONAL LICENSING, THE GENERAL ASSEMBLY SHOULD CONSIDER LEGISLATION THAT ESTABLISHES CRITERIA AND PROCEDURES FOR REVIEWING PROPOSED OCCUPATIONAL AND PROFESSIONAL LICENSING STATUTES TO DETERMINE WHETHER SUCH REGULATION IS A REASONABLE EXERCISE OF THE POLICE POWER OF THE STATE. (See Appendix B)

Under Resolution 61, SL 1981, the Study Committee on New Health Licensing Boards was directed to propose criteria and procedures to be used by the General Assembly in reviewing the need for new licensing boards and programs. Legislation proposing standards to be applied in evaluating new licensing laws was approved by the Committee and appears below.

Under the proposed Committee bill, every bill, resolution, amendment, or committee substitute instigating the licensing of any occupation or profession must have an assessment report describing the need for the proposal attached to it before it will be eligible for consideration by any committee of either house of the General Assembly. Substantive amendments to original proposals must be accompanied by a supplementary report pointing out the amendment's effect. This procedure is patterned after the fiscal note provisions in the Senate rules and G.S. 120-114(a), the actuarial note law. Reports will be prepared by the Legislative Committee on Agency Review according to criteria listed in the bill, and proponents of the new licensing law or program will be required to furnish detailed information in support of their proposal to the Committee. Additional

comments on how the procedure will work are interspersed with the text of the draft bill.

RECOMMENDATION 2. THE 1983 GENERAL ASSEMBLY SHOULD CONSIDER FAVORABLY LEGISLATION TO LICENSE RADIOLOGIC TECHNOLOGISTS.

The purpose of a regulatory program in radiologic technology would be to protect the health and safety of the people of North Carolina through the reduction of unnecessary radiation exposure.

An effective, mandatory credentialing program that establishes minimum education and training requirements for all individuals who operate radiologic equipment in North Carolina will result in improved safety for the patient as well as the operator.

There exists a significant and growing concern among members of the general public about radiation exposure of any type. In recent months in North Carolina, the greatest attention has been directed toward nuclear power and low level radioactive material storage problems. In most instances, the public is not yet aware that the greatest potential for unnecessary radiation exposure occurs in the medical arena -- not in nuclear power.

RECOMMENDATION 3. THE 1983 GENERAL ASSEMBLY SHOULD NOT PASS LEGISLATION THAT WOULD REQUIRE LICENSING OF ATHLETIC TRAINERS. The Committee was impressed with the quality of services provided by qualified athletic trainers to North Carolina and the impact that these personnel have on the injury and reinjury rate. The National Athletic Trainers Association (NATA) has developed policies and procedures of certification that adequately establish the athletic trainer as a qualified health care professional. Therefore, athletic trainers should be encouraged to pursue

certification through their national organization instead of licensing.

RECOMMENDATION 4. THE 1983 GENERAL ASSEMBLY SHOULD NOT PASS A SEPARATE LICENSING STATUTE FOR OCCUPATIONAL THERAPISTS BUT SHOULD CONSIDER THE POTENTIAL FOR A LICENSING STATUTE THAT WOULD INCLUDE ALL SUBSPECIALTIES WITHIN REHABILITATION THERAPY UNDER ONE UMBRELLA.

It seems that all of the subspecialties of rehabilitation including physical therapy, occupational therapy, vocational rehabilitation, music therapy, recreational therapy and others are intertwined. Therefore, all of these specialties should be licensed or regulated by one umbrella body.

RECOMMENDATION 5. THE 1983 GENERAL ASSEMBLY SHOULD NOT PASS LEGISLATION THAT WOULD ESTABLISH LICENSING OF COUNSELORS BUT INSTEAD CONSIDER A STATE REGISTRATION OR CERTIFICATION ACT FOR PROFESSIONAL COUNSELORS.

Since there is potential for harm within the broad spectrum of counselors, it seems advisable to establish a statutory registry that would incorporate standards for inclusion under the authority of the state. These standards would have to be met before the person could hold himself out to the public as a "registered professional counselor." This would give the public some standard by which to judge practitioner competence. It could operate in the same way as licensure except that it would not be exclusive. It would not attempt to punish those who held themselves to be counselors of various kinds but would reserve the use of the title, "Registered Professional Counselor" to persons listed in the register. It would define for the public a level of competence in counseling that has the stamp of approval of the state. There is precedent for this in the law regulating Certified Public Accountants.

RECOMMENDATION 6. THE 1983 GENERAL ASSEMBLY SHOULD NOT PASS LEGISLATION THAT WOULD REQUIRE LICENSING OF SOCIAL WORKERS BUT INSTEAD CONSIDER A STATE CERTIFICATION ACT FOR SOCIAL WORKERS.

A certification act would serve as a means of identifying persons with experience or specialized training and thereby give employing agencies and the public a means of readily identifying such persons. This would give the public some standard by which to judge practitioner competence.

A statutory registry would incorporate standards for inclusion under the authority of the state. It would operate in the same way as licensure except that it would not be exclusive. It would not punish those who hold themselves to be social workers but would reserve the use of the title "Certified Social Worker." There is precedent for this in the law regulating Certified Public Accountants.

A P P E N D I C E S

STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611



1981-1983

LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

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A BILL TO BE ENTITLED
AN ACT TO AUTHORIZE THE LEGISLATIVE COMMITTEE ON AGENCY REVIEW TO STUDY
THE NEED FOR NEW LICENSING LAWS AND PROGRAMS ACCORDING TO CRITERIA
AND PROCEDURES SPECIFIED HEREIN.

The General Assembly of North Carolina enacts:

Section 1. Chapter 120 of the General Statutes is amended by adding
a new Article to read:

"ARTICLE 17.

"Review of Proposals to Establish New Licensing Laws and Programs.

"§ 120-124. Findings and purposes.--The General Assembly finds that the number of occupational and professional licensing boards has substantially increased and that licensing boards have occasionally been established without sufficient attention to whether such regulation is a reasonable exercise of the police powers of the state. The General Assembly further finds that by establishing criteria and procedures for reviewing proposed occupational and professional licensing statutes, it will be in a better position to evaluate the need for new regulatory bodies and programs.

No new licensing law or program shall be established unless the following criteria are met:

(1) The unregulated practice of the profession or occupation can substantially harm or endanger the public health, safety or welfare, and the potential for such harm is recognizable and not remote or dependent upon tenuous argument;

(2) The profession or occupation possesses qualities that distinguish it from ordinary labor;

(3) Practice of the profession or occupation requires specialized skill or training;

(4) A substantial majority of the public does not have the knowledge or experience to evaluate whether the practitioner is competent; and

(5) The public is not effectively protected by other means.

Source: This section is similar to some provisions of G.S. 143-34.10, the findings and purposes section of the old Sunset law, and it loosely tracks other language in the Virginia Code (§ 54-1.17) and in the bill establishing the new occupational licensing boards study. It also tracks North Carolina

case law which limits licensure to situations in which the law bears a rational, real or substantial relation to the public health, safety or welfare.

Comment: This sets forth the General Assembly's reasons for a system to assess the need for new occupational or professional licensing boards or laws. This section applies only to laws establishing new licensure programs. Thus, for example, bills changing the composition of existing boards or establishing a registration program for a profession or occupation would not be subject to the criteria listed in this section.

"§ 120-125. Definitions.--As used in this Chapter,

(1) "Assessment report" means a report that initially describes the need for and fiscal impact of an occupational or professional licensing board or law as proposed by a bill, resolution, amendment, or committee substitute.

(2) "Committee" means the Legislative Committee on Agency Review as established by G.S. 143-34.25.

(3) "Licensing" means a regulatory system that requires persons to meet certain qualifications before they are eligible to engage in a particular occupation or profession.

(4) "Supplementary report" means a report that assesses the changes proposed by an amendment or committee substitute to a bill, resolution, amendment, or committee substitute for which an assessment report has already been prepared.

Comment: "Licensing" is defined to ensure that proposed laws that can exclude persons from an occupation or profession are reviewed, regardless of whether the proposal is called a licensing law or something else.

"§ 120-126. Proposed occupational and professional licensing board or law; assessment reports.--

(a) Every bill, resolution, amendment, or committee substitute introduced in the General Assembly proposing (1) the licensing of any occupation or profession or (2) a study of the need for the licensing of an occupation or profession shall have attached to it at the time of its consideration by any committee of either house of the General Assembly an assessment report which shall describe the need for the proposed new board or law. This report shall be attached to the original of each proposed bill, resolution, amendment, or committee substitute which is reported favorably by any committee of either house of the General Assembly, but shall be separate therefrom, shall be clearly designated as an assessment report, and shall not constitute a part of the law or other expression of legislative intent proposed by the bill, resolution, amendment, or committee substitute.

Source: Similar to G.S. 120-114(a), the actuarial note law, and Rule 42.2, actuarial notes.

Comment: This subsection does not seek to limit or prohibit the introduction of (1) legislation establishing new licensing boards or initiating licensure of a profession by an existing board or (2) studies to determine the need for licensing an occupation or profession. Instead, it follows the same method used with fiscal and actuarial notes; before the bill, resolution, amendment, or committee substitute can be considered, it must be accompanied by the required assessment report.

(b) If the proposal to license an occupation or profession is first contained in a bill, resolution, amendment or committee substitute the sponsor shall present a copy of the measure to the Legislative Committee on Agency Review which shall prepare an assessment report. If the proposal is not in the form of a bill, resolution, amendment, or committee substitute, the person or organization that seeks establishment or licensing of the profession or occupation may obtain an assessment report from the Committee only if a legislator requests the Committee to prepare a report.

Source: Similar to G.S. 120-114, the actuarial note law.

Comment: This subsection allows requests for the establishment of new licensing boards or laws made during the session or between sessions to be addressed by the Legislative Committee on Agency Review. Other sections set forth the procedures the Committee must follow in preparing an assessment report.

(c) When any committee reports a bill or resolution to which an assessment report was attached at the time of committee consideration which is accompanied by any amendment that would affect the substantive provisions of the bill or resolution, the chairman of the committee reporting the bill or resolution shall obtain a supplementary report assessing the changes proposed by the amendment from the Legislative Committee on Agency Review. This report shall be attached to the committee report on the bill or resolution. An amendment to any bill or resolution shall not be in order if the amendment proposes the licensing of any occupation or profession, unless the amendment

is accompanied by an assessment report prepared by the Legislative Committee on Agency Review. A substantive amendment to any bill or resolution to which an assessment report is attached shall not be in order unless it is accompanied by a supplementary report.

(d) When any committee reports a committee substitute for a bill or resolution to which an assessment report was attached at the time of committee consideration of the original bill or resolution, the chairman of the committee reporting the committee substitute shall obtain a supplementary report assessing the changes proposed by the committee substitute from the Legislative Committee on Agency Review. This report shall be attached to the committee report on the bill or resolution. A committee substitute for any bill or resolution shall not be in order if the committee substitute proposes the licensing of any occupation or profession, unless the committee substitute is accompanied by an assessment report prepared by the Legislative Committee on Agency Review.

Source: G.S. 120-114, the actuarial note law.

Comment: These two subsections are intended to require an evaluation of the changes in a bill's substantive provisions proposed by a floor or committee amendment or by a committee substitute. For example, an amendment could be introduced that would exempt certain people from coverage of the licensing law, such as a grandfather clause, and these kinds of changes should be evaluated by the Committee before the amendment is eligible for consideration. Subsection (c) also requires that amendments establishing new licensing boards or laws which are attached to totally unrelated bills receive an assessment report before they may be considered.

(e) Assessment reports shall be prepared and returned to the sponsor or requesting party not later than two months after the Committee receives the request, provided that if the volume of requests makes preparation of all such reports impossible within that time, the Committee may extend the time for preparation of any report to a maximum of three months from the time the request is received. Supplementary reports shall be prepared and returned to the appropriate committee chairman or sponsor not later than two weeks after the Committee receives the request. The Committee shall not consider any request until it has received the information required by G.S. 120-127(a).

Comment: Since most licensing proposals are discussed and formulated over a fairly long time, it is hoped--and encouraged--that sponsors will present proposed legislation to the Committee for review between legislative sessions. The Committee will be able to review proposals more quickly when its members are not also busy with duties during legislative sessions. To give the Committee more time during legislative sessions, it is authorized to take up to three months before it issues an assessment report. Obviously, a three-month delay during a session could prevent consideration of a proposal during that session, giving the sponsor a good reason to make his request to the Committee at another time.

In order to prevent the Committee's not having sufficient time to consider the supporting information required by the act, the request will not be considered to have been made until that information is furnished to the Committee.

(f) The Committee shall make all assessment and supplementary reports available to the membership of the General Assembly. At least one copy of all draft and final reports shall be kept in the Legislative Library for public inspection.

"§ 120-127. Procedure and criteria to be used in preparation of assessment reports.--(a) The Legislative Committee on Agency Review shall conduct an evaluation of the need for each proposed occupational or professional licensing board or law. The person or organization seeking licensure shall have the burden of demonstrating that the criteria listed in Section 1 are met and to this end shall provide the Committee with the following information:

(1) Whether the unregulated practice of the occupation or profession may be hazardous to the public health, safety, or welfare;

(2) The number of people who would be regulated and the number of persons who use those services;

(3) Whether the occupational or professional group has an established code of ethics, a voluntary certification program, or other measures to ensure a minimum quality of service;

(4) Whether other states have regulatory provisions similar to the one proposed;

(5) How the public would benefit from regulation of the occupation or profession;

(6) How the occupation or profession would be regulated, including the qualifications and disciplinary procedures to be applied to practitioners;

(7) The purpose of the proposed regulation and whether there has been any public support for licensure of the profession or occupation;

(8) Whether any other licensing board regulates similar or parallel functions; and

(9) Any other information the Committee considers relevant to the proposed regulatory plan.

The Committee shall adopt a form for use by applicants. The form shall contain a list of questions to be completed by the person or organization requesting the assessment report and a statement of General Assembly policy as to when regulation of an occupation or profession is in the public interest.

(b) In preparing the assessment report, the Committee shall evaluate, but shall not be limited to considering, the issues listed in subsection (a). Upon completion of the evaluation, the Committee shall submit its final report to the requesting party. The report shall analyze the effects of licensing the occupation or profession and shall include the Committee's recommendation on whether the General Assembly should approve the proposal. In preparing its report the Committee shall make specific findings on each of the following:

(1) Whether the unregulated practice of the profession or occupation can substantially harm or endanger the public health, safety or welfare, and whether the potential for such harm is recognizable and not remote or dependent upon tenuous argument;

(2) Whether the profession or occupation possesses qualities that distinguish it from ordinary labor;

(3) Whether practice of the profession or occupation requires specialized skill or training;

(4) Whether a substantial majority of the public has the knowledge or experience to evaluate the practitioner's competence; and

(5) Whether the public can be effectively protected by other means.

(c) The Committee shall furnish a draft copy of the final assessment report to the requesting party at least ten days before the final report is released. The requesting party shall have an opportunity to respond to the Committee draft. The Committee shall consider all such responses in the preparation of its final report.

(d) If the Committee recommends against licensure, it may suggest alternative measures for regulation of the occupation or profession.

Source: The items listed in subsection (a) are generally taken from the list of questions suggested in the Virginia legislation. Because it is impossible (or would be too lengthy) to list all items the Committee may want to consider, there is catchall language in subdivision (9). The Committee is also required to adopt a form containing questions incorporating the items listed in subsection (a). These questions can be as detailed as the Committee needs (for an example, see pages 7 through 12 of the Virginia "Information for Parties Requesting Occupational Regulation").

Subsection (b) is loosely taken from G.S. 143-32.16, which sets forth some procedures for the old Sunset Commission.

Comment: The items listed in subsection (a) broadly incorporate some of the major items to be considered in determining whether an occupation or profession should be licensed. They follow the philosophy of State v. Ballance, 229 N.C. 764 (1949), which states that regulation which "is addressed to the interests of a particular class rather than the good of society as a whole" is not a valid exercise of the state's police power.

Subsection (c) ensures that the sponsor of the proposal will have an opportunity to comment on the assessment report before it is finalized.

Subsection (d) authorizes, but does not require, the Comitée to make alternative suggestions for regulating the profession or occupation, such as a registration system or stronger civil or criminal penalties, if it finds licensure to be unwarranted.

"§ 120-128. Hearings by Legislative Committee on Agency Review; final action by Committee.--(a) Before submitting an assessment report concerning the need for a proposed occupational or professional licensing board or law, the Committee shall hold one or more public hearings. The Committee shall notify the public of every hearing and shall offer any person an opportunity to present data, views and arguments regarding the proposed report. The notice shall be published in at least one newspaper of general circulation in this state at least 10 days before the public hearing and at least 20 days before the adoption of the report. The notice shall include:

- (1) The time and place of the hearing;
- (2) A statement of the manner in which data, views, and arguments may be submitted either at the hearing or at other times;
- (3) A statement or summary of the proposed report's contents or a description of the issues involved; and
- (4) Where and when the proposed report may be inspected and how copies may be obtained.

(b) The Committee shall send a notice of public hearing to all persons who have made a written request to the Committee for such advance notice. The notice shall be in writing and shall be forwarded by mail or otherwise to the last address specified by the person.

(c) If at least one hearing that meets the notice requirements of subsections (a) and (b) has been held, subsequent hearings concerning the same assessment report may be conducted without meeting those requirements if the hearing date, time, place and content are announced at the immediately preceding meeting that addresses that assessment report.

(d) Any hearing notice shall be delivered by hand to the Press Office and the offices of the Speaker and Speaker pro tempore of the House of Representatives, President pro tempore of the Senate, Lieutenant Governor, Governor and Principal Clerks of both houses. If the notice is issued during a legislative session, it shall be read on the floor of each house at least two times before the scheduled hearing date.

(e) The Committee may set reasonable time limits for the oral presentation of views by any one person at any hearing. The Committee shall permit anyone to file a written statement regarding a proposed report within 10 days after the conclusion of any relevant public hearing or within such additional time as may be described in the notice of hearing.

(f) Upon completion of all relevant hearings and consideration of all data and arguments submitted regarding the proposed assessment report, and after distribution of a draft report to the sponsor or requesting party as described in G.S. 120-127(c), the Committee shall adopt its final report and shall deliver it to: (1) the sponsor, if the proposal is contained in a bill or resolution; (2) the legislator who has requested preparation of the report in behalf of the person or organization seeking establishment of the proposed board or law, if the proposal is not in the form of a bill, resolution, amendment or committee substitute; (3) the appropriate committee chairman, if a committee amendment or committee substitute requires preparation of a report

under G.S. 120-126; or (4) the sponsor of any floor amendment that requires preparation of a report under G.S. 120-126.

(g) Upon a determination that the public health, safety or welfare requires that an assessment report be prepared and adopted as soon as possible, the Committee may waive the public hearing requirements of this section. No public hearing shall be required before preparation or adoption of any supplementary report.

(h) When assessment or supplementary reports involving the same or similar occupations or professions are pending before the Committee, the Committee may order joint hearing of any or all of the matters to be addressed by the reports. The Committee may also make such other orders concerning related proceedings as may tend to avoid unnecessary costs or delays.

(i) The Committee shall not be subject to the provisions of G.S. Chapter 150A, the Administrative Procedure Act. Other matters regarding Committee procedures and operations shall be as provided in Article 1.2 of Chapter 143 of the General Statutes.

(j) Upon the request of a member of the General Assembly, the Committee shall review a proposed amendment to an existing statute which establishes or licenses an existing occupation or profession. After completing its review, the Committee shall publish a report describing the effect of the proposed amendment. The Committee may hold one or more public hearings while preparing the report. Any amendment for which a report is requested under this subsection shall not be eligible for further consideration by the General Assembly until the final report has been prepared and made available to all members of the General Assembly and to the Legislative Library."

Source: Loosely taken from portions of G.S. 143-34.18, the hearing procedure for the old Sunset Commission and G.S. Chapter 150A, the Administrative Procedure Act.

Comment: The time limits and notice requirements of the public hearing generally follow accepted practice for legislative committees and State agencies. Changes have been made to reflect the appropriate differences in who should receive hearing notices, etc.

Subsection (c) attempts to expedite subsequent hearings on matters that have already been the subject of at least one hearing that has been properly noticed under subsections (a) and (b). The language requires the announcement of time, place, etc. to be made at the immediately preceding meeting that addressed the same assessment report. Thus, if a number of hearings are held by the Committee it would not be necessary to announce the next hearing time and place until the need becomes apparent at the immediately preceding hearing.

Subsection (g) allows the Committee to waive the public hearing requirement. A waiver provision can be helpful if an amendment or committee substitute that would require an assessment report is proposed near the end of the session. On the other hand, the purpose of having an assessment report prepared by an independent committee is to apply the same criteria to all groups seeking licensure. In the interest of conformity to these standards, the Committee can exercise the waiver only if it determines that the public health, safety or welfare requires such action. Supplementary reports do not require public hearings, although the Committee may call a hearing if the subject matter warrants. This subsection does not carry forth the old Sunset

law requirement that a public hearing also be held before the legislative committee of reference in each house.

Subsection (j) extends the bill's review requirement to proposed changes in an existing statute that provides for establishment or regulation of a profession or occupation, but only upon the request of a member of the General Assembly. Thus the Committee would have the option of looking at selected changes in existing statutory schemes. Some possible kinds of amendments that could be brought in under this subsection include those adding new disciplinary grounds, changing the definition of the practice of a particular profession or occupation, giving an existing board new powers, etc. Limiting reviews under this subsection to requests by legislators will prevent automatic review of technical, noncontroversial, or unimportant matters.

Sec. 2. This act shall be effective on July 1, 1983.

